



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

---

PROFESSIONAL, ADMINISTRATIVE AND TECHNICAL EMPLOYEES OF DERRY :  
:   
Complainant :   
:   
v. :   
:   
TOWN OF DERRY :   
:   
Respondent :   
:   


---

CASE NO. M-0626:2

DECISION NO. 91-23

APPEARANCES

Representing Professional, Administrative & Technical Employees of Derry

Gary W. Wulf

Representing Town of Derry

Harry Gale, Consultant

Also appearing:

- Malcolm McIver, P.A.T.E.
- George Sioras
- Ronald Gagnon
- Mayor Jack Dowd
- Frederick A. Tompkins, Councilman
- Rodney Bartlett

On August 29, 1990 the Professional, Administrative and Technical Employees of Derry filed an unfair labor practice charge against the Town of Derry. Charging violation 273-A:5 (c) discriminating in the hiring or tenure or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization and Section E of the above statute, to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost items agreed upon in negotiations and refuse to recognize the previously provided rights and benefits of unit employees and on October 9, 1990 specifically claimed that the level of rights and benefits from which negotiations should proceed was in fact a reduction in said rights and benefits. And the charge further states that the Town deliberately calculated to discriminate against unit employees because of their interest in organizing for the purpose of being represented and negotiations. And further that the Town if attempting to require that unit employees negotiate in order to achieve rights and benefits which they possessed at the time of their organization. And further charge that the Town made substantial changes in their conditions of employment without their agreement and absent negotiations relating to such changes.

The Town of Derry responded to the charges through its representative Harry S. Gale denying that they had violated RSA 273-A:5 (c) (e) and allege that the bargaining unit was trying to achieve certain benefits through the Labor Board that which it must achieve at the bargaining table. Further no collective bargaining relationship existed between the parties prior to this unit's certification. The Town raised the question concerning Mr. Wulf's role as a representative of this union on the grounds of possible conflict of interest, as well as a simple matter of ethics and further request the dismissal of this charge and order the parties to engage in negotiations provided in RSA 273-A.

Hearing in this matter was held on February 5, 1991 at the Office of the PELRB in Concord, N.H. The complainant argued at length as to the history of the relationship between the Professional and Technical employees with the previous Mayor and submitted evidence of a written agreement which was not recognized under 273-A, but was a general agreement reduced to writing between representatives of the parties and Town which had been in existence prior to the change in benefits. The complainant further argued that the Town refused to recognize the previous policy which had been reduced to writing. This agreement in effect involved all of the membership in the now certified unit and the complainant contends that the action denying them certain benefits on a continuing bases under the old agreement was taken deliberately because in their opinion the Town knew of the prospective petition for certification of a bargaining unit and further alleged that such action was to discourage the unionization of the group and did in fact take away certain rights and privileges given prior to the filing of the petition of the certification.

On November 13, 1989 the Mayor issued a non-union policy changes which differed from that of the previous Mayor. Representative of the now certified union argued at great length as to his conclusion and others that the actions were very specifically taken with the intent to discourage organization.

The Town by its representative Harry Gale, recited the history of the petition for the bargaining unit and the dates involved and restated the history of the relationship between the now certified group and the previous semi-organized group who dealt with the Mayor on a mutual agreement bases which had been reduced to writing with respect to certain actions to be taken on behalf of the Town and involving its employees, covering working conditions and benefits of the professional and technical group.

On October 9, 1990 the Town advised the potential union that they had to negotiate all things that had been changed and did in fact have to negotiate at the table covering those changes which had been made and they agreed to negotiate such changes.

Representative of the Town, Gale raised the question as to whether or not the group had a right to now come to PELRB one year after the changes and to request relief on items that are to be negotiated and cited the Claremont case. Representative of the Town further cited the Claremont case which involved the rights of the employees involving previously granted benefits. The matter of the written agreement, although not certified between this group of employees and the Town was discussed with the Labor Board at an early date prior to this complaint an unofficial opinion was rendered that in view of the agreement, even though not recognized under 273-A could be argued before the Labor Board as a policy of past practice. Gale, on behalf of the Town argued that the election on June 1, 1990 was conducted and a certificate had been issued designating the certified unit of professional and technical employees of the Town of Derry as official representative of the employees under 273-A. And further argued that this Board had no right to consider the prior contract until such time as it was organized to be represented until 273-A.

Certain correspondence were exchanged between Professional Administrative group and the Mayor, such correspondence was dated in April, 1989.

Various witnesses offered testimony as to their interpretation of the existing situation prior to the official certification under 273-A of the unit and as to the written agreement between this same group when not organized or certified under 273-A. Witnesses further testified that certain benefits had been denied this group which had historically been given under the prior written agreement, and certain benefits had been given by the Town Mayor and further the Town argues at length that they possess every right to make policy changes up until such time as a group is certified and then such items will be discussed at the negotiating table.

The central issue in this case before this Board is whether or not past actions or past policies as demonstrated by the evidence before us reduced to a written agreement should continue to be enforced and continued to be in existence prior to petition for certification as an official bargaining unit under 273-A.

After considering all the evidence and the testimony offered at the hearing, the Board makes the following findings and substitutes its findings for the requests of the parties.

#### FINDINGS OF FACT

1. There was an agreement reduced to writing which suggest to this Board that an agreement was in existence although not recognized under 273-A in which the Professional and Technical employees of the Town of Derry received certain benefits and consideration along with other Town employees.
2. The above written agreement was an agreement between representatives of an unofficial group and the Mayor.
3. This agreement had been historically continued without question for a period of time.
4. A new Mayor was elected in the Town of Derry who elected to change certain provisions in a policy effecting this particular group of employees of the Town of Derry and not other employees.
5. The Town was well aware based on the evidence offered at the hearing that this group intended to seek certification under 273-A and become the official bargaining representative in dealing with the Town of Derry and this group of employees.
6. Testimony further indicated that historically this had been an agreement between this group of employees and the Town who considered themselves to be semi-organized and doing business on the bases of mutual respect of the parties with respect to issues of benefits supplied to all Town employees.
7. This Board finds that an agreement was in existence prior to the petition to certification and constitutes a recognized agreement between this group of employees and the Town of Derry and constitutes past practice policy.
8. The members of the Professional, Technical Unit now certified should not be denied the same treatment as other Town employees under its Town policy up to the certification date.

#### ORDER

The Board finds the Town of Derry guilty of an unfair labor practice under 273-A:5 (b) terms and condition of employment and orders the Town of Derry to extend the agreement reduced to writing previously in effect to be continued and any benefits accrued under this policy must be recognized and granted by the Town and the parties

are entitled to these benefits up until the time of certification at which time all items will be the subject for the negotiations at the negotiating table.

Signed this 25th day of April 1991.



---

EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Also present and voting Board member E. Vincent Hall and Seymour Osman.